



County of Los Angeles CHIEF EXECUTIVE OFFICE

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April 8, 2015

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From: Sachi A. Hamai 
Interim Chief Executive Officer

SACRAMENTO UPDATE

Executive Summary

This memorandum contains pursuits of County position on the following measures:

- **Pursuit of County Position to Support AB 1051 (Maienschein).** This measure would: 1) add human trafficking to the list of felony offenses that may be used to establish a pattern of criminal gang activity pursuant to Proposition 21 of 2000; and 2) impose an additional three-year prison sentence for persons convicted of human trafficking offenses occurring within 1,000 feet of a school. Therefore, unless otherwise directed by the Board, consistent with existing policy to support proposals that add pimping, pandering and human trafficking to the list of crimes that establish a pattern of criminal gang activity and makes individuals eligible for sentencing enhancements pursuant to Proposition 21 of 2000, **the Sacramento advocates will support AB 1051.**
- **Pursuit of County Position to Oppose AB 1347 (Chiu).** This measure would establish a claim resolution process for all public entity contracts entered into on or after January 1, 2016, and set timelines for a public entity to respond to claims. Therefore, unless otherwise directed by the Board, because it is contrary to existing Board policy to support legislation to preserve and improve the County's ability to solicit and manage construction contracts and or job order contracts, **the Sacramento advocates will oppose AB 1347.**

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Pursuit of County Position on Legislation

AB 1051 (Maienschein), which as introduced on February 26, 2015, would: 1) add human trafficking to the list of felony offenses that may be used to establish a pattern of criminal gang activity pursuant to Proposition 21 of 2000; and 2) add an additional three year prison sentence for persons convicted of human trafficking offenses that occur within 1,000 feet of a school.

Proposition 21, approved by voters in 2000, provides that individuals who actively participate in a criminal street gang and who promote or assist in criminal conduct by members of that gang can be eligible for enhanced sentences and penalties. Implementing legislation defines a pattern of criminal gang activity and identifies 33 felonies eligible for enhanced sentences and penalties if a pattern of criminal gang activity is also proven.

Criminal street gangs in Los Angeles County and nationwide have increasingly engaged in sex trafficking and commercial sexual exploitation of minors. According to a United States Department of Justice study, close to 300,000 children are at risk of commercial sexual exploitation. California has three of the Federal Bureau of Investigation's 13 High Intensity Child Prostitution Areas, including Los Angeles. The average age that a victim is first trafficked for sexual exploitation is 12 to 14 years old, although some victims are much younger. Sex trafficking and commercial sexual exploitation of minors now rivals narcotic and arms sales as the major sources of revenue for many criminal gang organizations. In addition, sex trafficking provides minimal criminal exposure for a pimp or trafficker.

AB 1051 would add human trafficking to the list of felony offenses that may be used to establish a pattern of criminal gang activity pursuant to Proposition 21 of 2000. Additionally, this measure would provide that persons sentenced for human trafficking offenses upon the grounds of, or within 1,000 feet of, a public or private elementary school, vocational, junior high, or high school at any time when minors are using the facility, shall receive, in addition to any other penalty imposed, punishment of three years in State prison.

This office and the District Attorney support AB 1051. Therefore, unless otherwise directed by the Board, consistent with existing policy to support legislation that adds pimping, pandering and human trafficking to the list of crimes that establish a pattern of criminal gang activity and makes individuals eligible for sentencing enhancements pursuant to Proposition 21 of 2000, **the Sacramento advocates will support AB 1051.**

AB 1051 is sponsored by the County of San Diego. Currently, there is no registered support or opposition on file for this measure. AB 1051 is pending a hearing in the Assembly Public Safety Committee. AB 1051 would amend a voter-approved ballot initiative; therefore, it requires a two-thirds vote of the Legislature for passage.

AB 1051 is substantially similar to **County-co-sponsored SB 473 (Block) of 2013**, which would have added human trafficking to the list of felony offenses that may be used to establish a pattern of criminal gang activity pursuant to Proposition 21 of 2000, and would have made an individual eligible for enhanced criminal sentences and penalties. SB 473 was vetoed by Governor Brown on September 28, 2014. In his veto message, the Governor indicated that under current law, human trafficking convictions already impose substantial punishment, up to 20 years for sex trafficking offenses and 15 years-to-life for certain crimes involving children.

AB 1347 (Chiu), which as introduced on February 27, 2015, would establish a claim resolution process for all public entity contracts entered into on or after January 1, 2016.

The claim resolution process would have the following elements:

- Authorize contractors to submit a written demand or assertion, including a request for a modification, contract amendment, or change order, seeking an adjustment or interpretation of the terms of the contract documents, payment of money, extension of time, or other relief, including a determination of disputes or matters arising out of, or related to, the contract documents or the performance of work on a public work;
- Require a public entity to review a claim and, within 30 days, provide a written statement addressing what parts of the claim are disputed and what parts are undisputed;
- Require any payment due on an undisputed portion of the claim to be processed within seven days;
- Deem a claim be approved in its entirety if the public entity fails to respond within the 30-day period;
- Require disputed parts of the claim to be subject to nonbinding mediation;
- Specify that unpaid claim amounts accrue interest at 10 percent;

- Proscribe a procedure by which a subcontractor or lower tier contractor may make a claim through the contractor; and
- Require that the text of these provisions, or a summary of them, to be set forth in the plans or specifications for any public works project that may give rise to a claim.

Existing law prescribes various requirements regarding the formation, content, and enforcement of State and local public contracts. Under existing law, the resolution of a claim is subject to arbitration. Existing law applicable to local agency contracts specifies a process for the resolution of claims for contracts of \$375,000 or less.

The Department of Public Works (DPW) reports that AB 1347 would adversely impact its operations and would place unreasonable timelines on the claims review and response process. The bill would also significantly increase the financial and legal risks associated with public works contract projects.

According to the Department of Public Works, the definition of a claim in AB 1347 is overly broad and could lead to almost any written communication (e.g., mail, fax, email, text, handwritten note, etc.) relating in any way whatsoever to the project being deemed to be a claim by a court. For example, a Request for Information (RFI) by definition seeks an adjustment or interpretation of the terms of the contract documents. Under the definition of a claim in AB 1347, most RFI's would be deemed a claim, even if they do not expressly ask for money.

The Department of Public Works also notes that anything deemed a claim would require the County to review the claim and provide written response, identifying which portions of the claim are disputed and which are undisputed, in no more than 30 days. Then, separately for each claim disputed by the County, the County would have to conduct mediation within 10 days of the County's written response. The Department notes that on a large project, this could mean many separate mediation events over the course of a construction project. The bill is silent on who would pay for the mediation services.

The Department of Public Works indicates that the provisions of AB 1347, which would require a claim to be approved in its entirety if a public entity fails to respond to a contractor within the specified timeline, contradicts current law. Under the provisions of AB 1347, failure to respond in a timely manner would permanently and conclusively mean that the County has approved the claim, making it obligated to pay the claim in full within seven days. The bill does not provide an avenue for an appeal by the local agency and would significantly increase the County's potential liability.

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Finally, the Department of Public Works indicates that AB 1347 also grants immunity from the False Claims Act for any claims submitted by general or sub-contractors. This provision would allow contractors to submit poorly developed claims with impunity and allow them to pass-through the claims of the sub-contractors without the general contractor reviewing the claim. Thus, there is no risk to the contractor in presenting even the most questionable of claims. This would place the burden of sorting out legitimate items on the County.

This office and the Department of Public Works oppose AB 1347 because it would adversely impact DPW's operations and would place unreasonable timelines on the contract claims review and response process. The bill would also significantly increase the financial and legal risks associated with public works contract projects. Therefore, unless otherwise directed by the Board, because it is contrary to existing Board policy to support legislation to preserve and improve the County's ability to solicit and manage construction contracts and or job order contracts, **the Sacramento advocates will oppose AB 1347.**

AB 1347 is co-sponsored by: United Contractors; California Chapters of the National Electrical Contractors Association; California State Council of Laborers; California-Nevada Conference of Operating Engineers; and State Building and Construction Trades Council of California. The bill is supported by: Air Conditioning Sheet Metal Association; Air-conditioning and Refrigeration Contractors Association; Associated Plumbing and Mechanical Contractors; California Landscape and Irrigation Council; California Legislative Conference of the Plumbing, Heating and Piping Industry; Northern California Mechanical Contractors Association; and Southern California Contractors Association, among others.

AB 1347 is opposed by the California State Association of Counties and the Urban Counties Caucus.

AB 1347 is scheduled to be heard by the Assembly Accountability and Administrative Review Committee on April 15, 2015.

We will continue to keep you advised.

SAH:JJ:MR
VE:IGEA:ma

c: All Department Heads
Legislative Strategist